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File No. O Walan/50

Legal Department

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Subject:—

Opinions under the Bombay Hereditary offices Act 1874

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File No. O. Walan / 50

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C O N T E N T S

Legal Department File No.C.Water/50.

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Office of the R.L.A.

The Bombay Hereditary Offices Act, 1874, Section 18 and the Bombay Municipal Boroughs Act, 1925, section 68(1)(c)

Section 18 of the Bombay Hereditary Offices Act, 1874, provides that, when all or any of the property of a village watan of lower degree than that of Patil of Kulkarni consists of a right to levy in money or kind directly from the individuals, it shall be lawful for the Collector on the application of any person interested to cause the nature and extent of such right and of the duties to be performed and the persons, families or classes liable to make payment and to perform theduties to be defined in writing by a panchayat of five persons, etc. The proviso to this provision empowers the Collector himself to pass a decision in case thepanchayat does not come to a decision within seven days from the appointment of such panchayat, and the decision of the panchayat or the Collector as the case may be shall be final and binding on all personsor classes, etc. This section provides for the legal definition of the rights and duties of the village mahars and watchmen that would lead to peaceful settlement of quarrels which tend to the damage of the mahars. The mahars in the present case claim the right to the skin of thedead animals within the municipal area of Parle-Andheri Borough Municipality. This right is based on their duty to remove the dead animals butunder section 68(1)(c) of the Bombay Municipal Boroughs Act,1925, it is duty of the Parle-Andheri Municipality to abate all public nuisances. The removal of dead animals is certainly necessary to abate all public nusisances and as such it is a duty imposed on the Municipality to remove them. Although section 18 of the Bombay Hereditary Offices Act does not specify the removal of dead bodies as one of the duties of the mahars, it could presumably be one of the duties to be determined under that provision.

Assuming that it is a duty cast on the mahars with the consequent right of remuneration by duty of a claim for the skin, of such dead animals, the duty of removing the dead animals being now imposed on the municipality by virtue of section 68(1) of the Bombay Municipal Boroughs Act, the mahars could be deemed to be relieved of that duty inasmuch as section 18 of the Bombay Hereditary Offices Act would be deemed to be silently excluding from its operation the removal of dead bodies which has been provided for by section 68 of the Bombay Municipal Boroughs Act (See Maxwell p.157). Consequently, the mahars would not be entitled to claim any remuneration by way of the skin of thedead animals against the municipality. Section 18 of the Bombay Hereditary Offices Act will have no application in the present case. Besides, that section contemplates the settlement of disputes between mahars and individuals. "Individual" is one entity, one district being, a single one andwhen spoken of the human kind means <u>one man</u> or <u>one women</u> (see Iyer's Law Lexicon p.583). "Individuals" in section 18 of the Bombay Hereditary Offices Act would, therefore, mean villagers who dispute the right of the mahars to any right or remuneration. The Parle-Andheri Municipality would not be an individual within the meaning of that section. In the circumstances, the proceedings taken in the present case under section 18 of the Bombay Hereditary Offices Act were without jurisdiction and the decision may be set aside.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.,No.2818, dated the 27th February 1950.

EKN.20/6/

Bombay Hereditary Offices Act,1874, section 34,35 and 36. Claim by Woman Daulat Patil to be registered as representative wantdar of villages Undirkhede,Vichkhede and Sonarkhede in Parole taluka, District East Khandesh.

Section 34 of the Bombay Hereditary Offices Act,1874, provides for giving notice of adoption within three months and under section 35 in such notice is not given the Collector shall not recognise the adoption without the production of a certificate of heirship, or of a final decree of a competent court establishing the validity of such adoption. It is therefore obvious that the absence of a notice under section 34 within the prescribed time does not invalidate an adoption but only prevents its recognition by the Collector. Section 35 is no doubt put in the negative form but the implication of that section appears to be that, if the requisite certificate or final decree is produced, the Collector is bound to recognise the adoption (see Phadnis's Watan Act,p. 137). Under sec.36, immediately after the death of a representative watandar enquiry is required to be held to register the name of the heir of such deceased representative watandar. Sub-section (3) provides that if any person shall by production of a decree of a competent court satisfy the Collector that he is entitled to have his name registered as the nearest heir of such deceased watandar in preference to the person whose name the Collector has ordered to be registered, at any time within six years of such order, the Collector shall, subject to the forgoing provisoes, cause the entry in the register to be amended accordingly. An adopted son is treated as an heir of a representative watandar under sections 34 and 35. As stated above, under sec.35, if such adopted son produces an heirship certificate or a civl court's decree in support of his claim, the Collector is bound to recognise him as the heir of the deceased representative

watandar. No period of limitation is prescribed for t production of an heirship certificate or a civil Court's decree under s c. 35, whereas under sub-section (3) of sec. 36, the Collector is bound torecognise the adopted son as the heir only if he produces and heirship certificate or a court's decree within six years of the order recognising another person as the heir of the representative watandar. These provisions, that is tosay, section 35 and sub-section (3) of section 36, have to be read together and reconciled so far as the claims of a person adopted by the widow of a representative watandar are concerned. On so reading together it appears that if the adopted son produces the heirship certificate or civil court's decree within six years of the date of the order, the Collector is bound to recognise him as the heir of the deceased representative watandar and if he does not so produce within six years, then it would be within the discretion of the collector to recogni se or to decline to recognise the adopted son as the heir of the representati ve watandar.

2- It is true that in the present case the representative watandar died in 1918 and his younger brother Maharu was recognised as his heir in 1919. If the widow of the representative watandar had adopted and produced and heirship certificate or a civil Court decree before 1925, i.e. within six years the adopted son would certainly have been recognised by the Collector as the representative watandar under section 36, sub-section (3). But the adoption itself was made in 1938. Consequently, the question of production of a heirship certificate or the civil court's decree within six years under sub-section (3) of section 36, was not possible. The adopted son has produced an heirship certificate and ordinarily the Collector would have been bound to recognise him as the heir of the deceased

representative watandar under section 35, but as stated above, section 35 has to be read with section 36. Consequently, even though the adopted son has produced an heirship certificate under section 35, it w would still be open to the Collector to consider under sub-section (3) of section 36 whether he should not exercise his discretion in favour of the adopted son as the period of six years had already expired. It is, therefore, for Government to decide whether the applicant's adoption should or should not be recognised. If Government decides torecognise his adoption, Government's previous order will hav to be revised.

Sd/ P. M. Lad.
Remembrancer of Legal Affairs.

U.R. to R.D.No.3884 dated the 20th March 1950.

EKN. 20/6/

Patilki watan lands at Jalikatti, taluka Mudhol, district Bijapur, Claim of Muragepgauda Patil to arrears of mesne profits.

Although the order declaring Muragepgauda as the nearest heir of the deceased holder Tammangouda was passed by the Rajasaheb of Mudhol as late as on 6th March 1948 and only two days before the merger of that State in Bombay, it is not suggested that he acted mala fide and the Collector of Bijapur in para.2 of his letter at p. 13 ante reports that apparently there were no special reasons for his passing the orders on the eve of merger. As a matter of fact the applicant was actually put in possession of the Watan lands several years before he was declared as the lawful heir and the order of the Rajasaheb does not appear to have been challenged by any body. The effect of that order is that the applicant takes the estate of the deceased Tammangouda. It is not the case of a new watan being created. He would therefore be entitled to the profits of the estate since the death of Tammangouda.

2. The next question is whether the applicant's claim for recovery of the amount of mesne profits is time-barred. As regards this the view xpressed by the D.G.P. Bijapur in his opinion dated 24th February 1950(atpages 45.46 of file III) appears to be correct. After the death of Tammangouda the watan property was put under attachment by the Mudhol State, presumably pending the settlement of Tammangouda's heir. The extract from the Revenue Deposit Register shows the amount in the name of Tammangouda. Thus it can be said that the amount was held by the State in trust for Tammangouda's heir; and therefore as laid down in Secretary of State Vs. Bapuji Mahadoo, I.L.R. 39 Bom. 572 the claim would be one to which the bar of limitation cannot be pleaded; and the principle that the debts of the extinct state must be taken over by the absorbing State will apply to the present case.

(see Oppenhem's International Law, Vol.I, p.154)
The petitioner would, therefore, appear to be entitled to the arrears of the mesne profits.

3. It appears from the Collector's and Commissioner's reports in this case that the profits during the period of attachment from 1926 to 1939, amount to Rs. 18,771-0-6; But from the extract from the Khata at p. 9 of File III it appears that this amount is shown as due for the years from 1925-26 to 1946-47. Rd. may verify this.

Sd/ P. M. Lad.
Remembrancer of Legal Affairs.

EKM.20/6/ U.R. to R.D.No. 5196, dated the 17th April 1950.

Office of the R.L.A.

It is clear from the decision of the High Court in F.A.No.247 of 1941 that Government will have to hand over possession of all lands to the Desai whether Government had taken possession of them from him or from the tenants. If the aliences feel aggrieved, they may seek their remedy in a Court.

The Desai is however not entitled to mesne profits in execution of the decree, since he did not ask for them in the suit. The mesne profits may be appropriated by Government. If the tenants have any claim to mesne profits they may take appropriate civil proceedings, if so advised.

Sd/ P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to R.D.No.6753, dated the 18th May 1950.

CKN.20/6/.

L.D.R.I.No.8047 dt.8-5-50-

Submitted with reference to R.D.Note at pages 45 to 49 ante.

The Watan Rules, 1932, of the former Baroda State have been continued in force by the Baroda State (Application of Laws) Order, 1949 and subsequently by the Bombay Merged States (Laws)Act, 1950 (No.XV of 1950.)

The administration of the Rules was entrusted to the Barkhali Adhikari, who was the head of that department, exercised various powers conferred on him under the said Rules. The Comsr. N.D. in his letter dated 20-11-49 (p.1 ante) has raised a point that on account of the merger of the Baroda State, the post of the Barkhali Adhikari having been abolished who should exercise the powers of the Barkhali Adhikari under the Watan Rules, 1932.

The R.D. at pages 48-49 ante suggests that the powers under rules 5(a), 16,19,22 and 37 should be exercised by the Collr. and the power under rule 20(2)(b) should vest in the Government. With these suggestions the R.D. has sent the papers to L.D. with the remark that the L.D. may see u.o. As the post of the Barkhali Adhikari has been abolished, some other authority has to be replaced in his stead to exercise the powers and perform the functions under the Watan Rules, 1932. If the authority to be so replaced is to exercise the power under the designation "Barkhali Adhikari", it would not amount to an amendment in the Rules, and then a question would arise as to whether the Government is a competent authority to amend the Rules, (Otherwise it would amount to an amendment in the rules) According to sec. 5 of the Bombay Merged States (Laws) Act, 1950, the Watan Rules, 1932 are to be deemed as if

ley are enacted by the State Legislature and they can be altered amended or repealed by the State Legislature or any other competent authority. The rules as they stand do no contain any provision under which the Govt. can effect the proposed change. In the circumstances it is submitted that the purposed change can be effected only by an Act of the State legislature.

I agree. If the intention is to abolish the office of "Barkheli/Adhekari" and appoint some other officer or authority to do the statutory functions assigned to the Barkhali Adhikari under the watanRules 1932 it would be necessary to undertake legislature but until such legislature is passed it would be necessary to appoint some person as the Barkheli Adhkari to perform the functions entrusted to the Barkhali Adhikari under the Rules.

R.L.A. Sd/ P.H.Lad.

U.O.No. to R.D.No.6962, dated 23-5-50.

EKN.21/6/

Office of the R.L.A.

Recognition of non-watandar adoptee to Cordon Settlement Pargana Watans in 1938-whether these orders have retrospective effect.

It is true that by Government Resolution, Revenue Department No.2658/28 dated the 4th April 1938 Government cancelled Government Resolution, Revenue Department No.9234/24, dated the 25th July 1928 and 20th November 1928 and directed to follow the ruling in Balaji v. Datto and to recognise the adoptions of non-watandars to Gordon Settlement Pargana Watans, so long as there is in existence a lineal male heir of the original grantee of the Watan. But before these orders were passed Government were not recognising the non-watandar adoptee and as such the property in question devolved on Balaji Ramchandra the eldest male member from the Senior Branch in 1888 and since then the property is held by that branch and has passed on to his son Yeshwant Balaji. Yeshwant Balaji has already commuted his share in the cash allowance and the cash allowance was purchased and arrears upto 5th February 1949 have been paid to him. Yeshwant Balaji has since sold out all the properties. Apart from the question whether or not the Government orders of 1938 could be given retrospective effect it will not at any rate be possible for Government to restore the property, which has already passed out of the hands of Yeshwant Balaji to Keshav Gangadhar or to recover the arrears since 1902 when Narayan Kondo got the decree of the Lower Court confirmed by the High Court in Appeal No.57 of 1901. The view taken by the Commissioner, Central Division in this endorsement dated the 28th October 1949 appears to be correct.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.7828, dated the 9th June 1950.

EKN.21/6/

7221/25-4-52.

Submitted with reference to R.D.note at pp. 37-41 ante.

Shri Tirakangouda Mallangouda and two others have made a petition to Govt. claiming that their names should be entered in the Pali register as the Representative watandars in respect of the Patilki right of service in the village of Chalgeri, taluka Ranebennur, district Dharwar as against Shri Shivangouda Sannappagouda. The petition is made against the orders of the Commr. S.D. dated 10-3-1948 directing the entry of the name of Shivangouda Sannappagouda in the Patilki Hak register of the village.

EKN.21/6/ 22-10-49 and of the Collr. of Dharwar dt 25-11-48 confirming the order of the Asst Collector dated.

Office of the R.L.A.

Patilki Watan
Chalgeri, District
Dharwar.

The High Court Judgment in the present case being a judgment in personam would not be binding on Shri Shivanagauda who was neither a party nor a privy to the proceedings although it would be admissible in evidence under section 13 of the Evidence Act.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.11173, dated the 7th August 1950.

EKN.21/6/

Office of the R.L.A.

Question whether consent of Government is necessary for lease of land for 49 years.
Bombay Hereditary Offices Act,1874.

Section 5(1).

A Watandar is entitled to alienate watan lands for the term of his natural life and for such alienation sanction of the Government or the Commissioner under section 5(1) of the Bombay Hereditary Offices Act,1874 is not necessary. The expression "natural life" in the section shows that an alienation of watan property will hold good as long as the alienor is bodily alive. The land in question appears to be unassigned watan. It is therefore within the competence of the watandar to lease the land for a period of 49 years; and the lease cannot be declared null andvoid under section 11. If the watandar dies before this period, the alienation can be declared null and void andland resumed. The view taken by the Commissioner, Northern Division in his order No.W.T. No.2948 dated the 9th July 1949 is correct.

Sd/ P. M. Lad.
Remembrancer of Legal Affairs.

U.R. to R.D.No.1174, dated the
7th August 1950.

EKN.21/6/

Office of the R.L.A.

Although Shri Potnis and Shri Baxi are the hereditary servants of the Sawantwadi State, the posts held by them are not attached to any hereditary office statutorily recognised. Consequently, the question of abolition of their posts by legislation would not arise. As pointed out by Finance Department, these two persons could not be absorbed in service as they were unfit to hold any post in the new set up of administration. Consequently, there would be no liability on Government to continue them in Government service. They may, therefore, be discharged and some compendation ex gratia may be paid to them since they are not entitled to any pension.

Sd/ P. H. Lad.

Remembrancer of Legal Affairs.

U.O. to P.& S.D. through P.D.No.11678 dated the 17th August 1950.

RKN.21/8/

Office of the R.L.A.

Reduction is number of Representative Watandars.
Bombay Hereditary Offices Act, 1874.

Section 43.

The view taken by the Collector of Nasik is correct.

2. Under the provisions in Part VI of the Bombay Hereditary Offices Act, (Act III of 1874) the number of representative Watandars has to be fixed and the heads of the families of such representative Watandars have to be registered. Under the provisions in part VIII the Collector is given powers to determined the number of officiating Watandars and to call upon them to officiate or to appoint proper and fit persons as their deputies. Section 42 in this part provides that a representative Watandar shall if fit and proper perform the duties of the hereditary office. Section 43 provides that the Collector shall determine the number of officiators required for the proper performance of the duties of any office from time to time and for this requirement may call upon representative Watandars aforesaid to appoint sufficient number of fit and proper persons as deputies or may direct service in successive periods by representative Watandars who have hitherto served of are serving contemporaneously. It is clear from this provision that it is not necessary that all representative Watandars should be called upon to officiate. The number of officiators has to be fixed according to the requirements of the village and after having thus fixed that number the representative Watandars will have to be called upon either to officiate or to be given a turn by rotation to officate as such. "In gegistering a watan it is not necessary to provide for the performance of police patil's duties in the way of assigning the right to any particular person. Under section 43 the Collector determines the

number of officiators required for the duties. But he is not to say A should do the revenue and B the Police duties. When the Magistrate appoints the Police Patil herespects the settlements made by the Collector and gives the sanad to whichever of the two he pleases." (See Phadnis'Watan Act p.159). It is clear, therefore, that a representative Watandr has no vested right to claim to officate as Police Patil. Once he is recognized as a representative Watandar he would be registered as merely a representative Watandar and the question of assigning either the Pollice or the revenue duties would depend upon the Collector As stated above the number of officiators in the present case being more than sufficient for the requirements of the village the Collector was justified in reducing that number to 2 under section 43. Having thus reduced that number it was equally competent for him torequire the representative Watandars to officiate by turns. The present applicant is also given a turn. Consequently, he having no permanent right to officiate ~~xxxxxxxxx~~ as police patil, as it could be defeated at any time by an order under section 43, he could have no legitimate grievance when the Collector reduced the number of officators to 2 and every representative Watandar recognised and registered in the Watan register was given a turn.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 12180 dated the 25th August 1950.

EKN.21/6/

Kumboji Watan.

It is true that Babaji Wasudeogouda filed a suit against the two widows Gangabai wife of Dada and Akkabai wife of Komargouda for a declaration that he was the sole surviving male coparcener and as such was entitled to inherit the entire joint family property and that the defendants being the widows of members of a joint Hindu family were entitled only to maintenance and the decree passed by the Lower Court and upheld by the District Court was vacated by His Highness the Maharaja of Kolhapur in appeal, holding that Gangabai was the widow of a separated coparcener. Apparently this declaration granted by His Highness the Maharaja could not ordinarily have been granted in a suit of the nature filed by Babaji and in effect thedeclaration that Gangabai was the widow of ~~him~~ a separated coparcener did not clothe her with any rights as regards the joint family property. But the papers do not disclose whether Gangabai was in fact in possession and enjoyment of any separate property of her deceased husband Dada. Apparatly the Watan property was the joint property and as such the decree passed by His Highness the Maharaja in appeal could have little or no effect in respect of this property- It is also true that the order passed by His Highness the Maharaja of Kolhapur on 17th April 1913 in elucidation of his order dated the 9th Feb. 1913 granting Gangabai permission to adopt is illusa for what was in issue was whether permission to adop a stranger in respect of Watan property was in fact given by the Maharaja and the reply embodied in the order of 17th April 1913 is that whatever right th adopted mother possesses in the property the adopted son will get. Apparently this kind of reply was not an answer to the question in issue. However, whate

may.....

may be the effect of that order or of the decree of His Highness the Maharaja in appeal against the order of the Lower Courts in the suit filed by Babaji the fact remains that the whole matter was reviewed by the high CourtJudges of Kolhapur to whom the matter was referred by the Revenue Minister of Kolhapur. Those Judges after hearing the parties and going through the papers came to the conclusion that there was sanction of His Highness for the adoption of peergonda by Gangabai in view of which the application challenging the adoption of Peergonda was rejected by the Regency Council in 1945. The applicant appealed to the Resident for Kolhapur and the Deccan States who declined to interfere in the matter. He also applied to His Highness in 1947 and his application was rejected by the Ex.Chief Administrator, (Captain Nanjappa) Kolhapur, in 1949. In view of these circumstances and in view of the fact that the question has been judicially tested by the High Court Judges of Kolhapur it appears that it would not be proper for Government to interefere with the order at this stage.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R,D.No. 14251, dated the 19th October 1950.

EKN.21/6/

Office of the R.L.A.

Maki... false allegations will not amount to grave misconduct. Hereditary Offices Act, 1879 sec. 58.

The charge against the Kulkarni is that he made allegations against other officiating Kulkarni and Patels of Mamgoli and the touring E.A.K.Bagewadi which were reported to be baseless. The enquiry into this charge was entrusted by the Deputy Collector to the Mamlatdar. The Kulkarni did not attend the enquiry as he wanted the enquiry to be held by the Deputy Collector. The Mamlatdar did not proceed with the enquiry and thus the enquiry was not completed and the charge was not proved against the Kulkarni. No prosecution also seems to have been made against him for making false allegations Moreover these allegations were not, it appears, made in the course of official duties of the representative watandar. Consequently the Kulkarni cannot be declared ineligible for re-employment under section 58 of the Bombay Hereditary Offices Act, 1874 on the ground of grave misconduct. (see R.L.A's opinions No.882 dated 30-8-47; No. 9358 dated 20-9-47). Since the Kulkarni watans will be abolished by L.A. Bill No.XXXIX of 1950 which has been passed by the Legislature, it is for the consideration of the Revenue Department whether a fresh charge of habitual neglect of duties should be framed against him. The view taken by the Under Secretary Revenue Department is correct.

Sd/ P. M. Lad,
Remembrancer of Legal Affairs.

U.R. to R.D.No. 15731, dated the 11th November 1950

EKN.21/6/

Office of the H.L.A.

Issue of certificate when property is recorded as Government property- Hereditary Offices Act, 1874 -Sec.10-

A certificate under section 10 of the Bombay Hereditary Offices Act can be issued only when it appears to the Collector that by virtue of or in execution of a decree or order of any Court any watan or any part thereof or any profits thereto recorded as such in the Revenue records or registered under this Act etc..... have passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the Watandar etc. It is, therefore, apparent that the property must have been recorded as Watan property in the Revenue records or registered under this Act is a condition precedent to the issue of a certificate and the Collector must have been satisfied that the property is so recorded before he can issue a certificate. In issuing a certificate under section 10 the Collector acts judicially and is subject to the superintendence of the High Court. (See Phadnis' Watan Act, p.18.) In the present case the Collector has reported that the properties have been recorded in the Government records as Government lands,. If so, it appears it would not be competent for the Collector to issue a certificate under section 10 in respect of such property. It is true that the collector has quoted an instance in which, under similar circumstances; the Akalkot Darbar issued a certificate; but that would not serve as a good precedent for the Collecto to follow; for unless the conditions of section 10 are duly fulfilled, it would not be open to the Collector to issue a certificate. Moreover, the property appears to have passed into the possession of a non-Watandar sixty or seventy years ago in execution of a decree of a Civil Court and since

then no effective steps have been taken to get the alienation set aside. In the circumstances it does not appear advisable to issue any certificate under section 10 of the Bombay Hereditary Offices Act.

Sd/ P. N. Lad.
Remembrancer of Legal Affairs.

U.R. to R.D.No.16065, dated the 16th November 1950.

EKM.21/6/

17426/21-8-50

Submitted.

Shrimati Pukminibai w/o Devising Rajput was holding 'japti' sanadi S. Nos.195 and 226 at Dhamne, Taluka Belgaum. She died without any issue. Before her death, she had, however, sold the lands to one Shri Narsing Bhimsing Rajput, who is a stranger to the Sanadi family. But inspite of the sale of the land to Shri Narsing, the lands were held by one Raghunathsing who claims to be a 'Bhauband' of Devising (iee. the husband of the deceased holder of the lands.) Shri Narsing applied to P,O. for their restoration. The P,O. by his order dated 21-10-47 held that both Shri Narsing and Shri Raghunathsing were strangers to the 'sanadi' family and ordered that the lands should be resumed and entered as Government lands on the ground that the family of Devising is extinct The Collector has also reported that on fresh enquiry made by the P.O. and the Mamlatdar it transpired that Shrimati Rukminibai had left behind her Yashodbai w/o Gangaram, the brother of Devising. In view of this the Collector reports that the Sanadi family is not extinct, and the P.O.'s order will have to be set aside. He also invites attention to the Judgement of the Bombay High Court in S.A.No.845 of 1946 (Govt. of Bombay vs. Maliksaheb Wd.Muktramsaheb Ghorpaikar and another) and doubts whether the order of resumption passed by the P,O. can be held to be correct. R.D. states that the lands being 'Japti' in the present case according to the High Court decision the sale cannot be interfered with and parties will have to be directed to the Civil Court after vacating P, O's order. The R.D.A. is requested to advise.

2. In Government of Bombay vs.Malikasaheb Md.Muktumsaheb Ghorinaikar (S.A.No.845 of 1946) the High Court has held that when watan lands in respect of which service has to be rendered are made subject to full assessment and no services are demanded from the occupier of the lands and no remuneration is paid for the services, then the character of the land is changed and it becomes rayatwa and it is not open to Government subsequently to demand any service from the occupants. The High Court has also held that in the case of Japti sanadi lands unless a condition to the effect that such japti sanadis would be recalled to duty etc. was imposed at the time of levying full assessment on the lands Government cannot recall them to duty. In accordance with this decising in the present case since the japti sanadi lands have become rayatwa and there is no record to show that any such condition, as stated above, was imposed while levying full assessment, the sale of these lands to a stranger could not be interfered with. The proper coupe would be to vacate the resumption order made by the P.O. on 21-10-1947 asking the parties to settle their dispute in a Civil Court. The papers may be seen and returned. The view taken by R.D., in para. 7 of its note dated 14.7.50 is correct.

P.S.Nadkarini
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A.L.R. Reply may be at A.

Sd/ R.T.K.

R.L.A. Sd/ P.M. Lad.

U.O.R to R.D.No.15816, dated 4-11-50. EKN.21/6/

Office of the R.L.A.

cession enquires in Patilki Watan in Karnool taluka, Kagal.

Under the Hindu law if the son dies leaving a son or wife, the widow's power to adopt comes to an end at his death and she cannot thereafter exercise it though she may have been expressly authorised by her husband to adopt in the event of the son's death. The reason is that the estate then vests in an heir of the deceased son and the widow cannot adopt to her husband so as to devest the estate by the heir. (see Mulla's Hindu law, 10th Edn. p.553-54). The same law prevailed in the Kolhapur State when sanction was given to Dhondubai for adopting the present applicant (see Digest of Hindu Law,1920 p. 37). Consequently the adoption of the applicant by Dhondubai cannot be said to be valid and the sanction granted by the Jehagirdar of Kagal cannot validate the adoption. Under the Kolhapur Durbar Political department notification No.61, dated the 30th March 1938, it is no doubt true that the right to approach His Highness in appeal. After merger of the Kolhapur State with the Bombay the apellate powers exercised by His Highness could be exercised by the Government (see para 3(4) of the Administration of Kolhapur State Order). The order in the present case was passed by the Collector and not by the Government. Consequently it would be necessary for Government to set aside the order passed by the Collector and pass a fresh order on the lines of the order passed by the collector.

Sd/ B.M.Lad.

Remembrancer of Legal Affairs.

U.H. to R.D. No.17293. dated the 6th December 1958

KN21/6/

* field succession enquires in respect of Patilki kadim Inam was delegated to the Jehagirdar by the Durbar but the aggrieved had a right to →

The Baroda Watan Rules,1932.
Delegation of powers under---

GOVERNMENT OF BOMBAY;
Revenue Department.
Resolution No.6980/49.
Bombay Castle, 18th September 1950.

Letter from Commissioner, N.D., No.W.T.N ., dated the 28th November 1949.

"The Bombay Hereditary Offices Act, 1874, has not been extended to the Baroda State but the Watan Rules of 1932 which were in force, before the merger have been continued in force. Under these rules, the Barkhali Adhikari was exercising the following main powers, viz:-

Rule 5(a) - power to fix the compensation to be paid to the alinee when the Watan land is restored to the original watandar;

" 16:- power to divide a watan into any number of shares on the application of a sharer;

" 19:- power to decide all disputes of sharers as regards their shares in the watan or refer the parties to a civil court;

" 20(2)(b)-power to grant an allowance for maintenance etc. to the surviving females of the watan family;

" 22- power of issuing a certificate for instituting a civil suit; and

"-30- power to appoint and dismiss the guardian when the Representative Watandar is a minor or an insane person.

Over and above, as a general rule, all mutation cases pertaining to watans, were decided by the Barkhali Adhikari and as a head of the Barkhali Department, the revision powers were also exercised by him.

On account of the merger of the State, the post of Barkhali Adhikari has been abolished and the question now has arisen as to who should exercise his powers. The Barkhali Assistant is sending

p.T.O.

cases of mutations, divisions of watan etc. to this office presuming that the powers of the Barkhali Adhikari now vests in the Commissioner N.D. Under the Watan Act, these powers are exercised by the Collector under the corresponding sections of the Act. As no orders in this respect have been passed by Government, it is suggested that the Collectors concerned may be authorised to exercise the powers of the Barkhali Adhikari, their decisions being subject to appeal to the Commissioner and Government.".

Letter from the Commissioner, C.D.,No.WTN/289, dated the 11th Jaunary 1950.

"Reference Government endorsement Revenue Department, No.C/100198-M, dated 1st December 1949.

The Powers referred to by the Commissioner, N.D. fall under the following corresponding sections of the Acts triable by the Officers noted against them:-

Watan Rules 1932 prevalent in Baroda State.	Corresponding Provision of the Act in force in the Bombay Province.	Officers competent to try the cases.
1-	2.	3
5(a)	Section 9(2) Bombay Hereditary Offices Act.	Prant Officer.
16	" 5 - do -	Commissioner and Government.
30	" 37 - do -	Prant Officer.
19	Page 84 Revenue Accounts Manual.	Prant Officer.
20(2) (b)	Rule 7 Saranjam Rules.	Government.
22	Section 6 Pensions Act	Government.

2. The powers of Collectors under the Bombay Hereditary Officers Act 1874 except these under section 77 for hearing appeals have been under the orders contained in Government Resolution Revenue Department No. 9247/39, dated 17th December 1943 delegated to Assistant and Deputy Collectors.

3. It seems from Government unofficial reference xxfxx dated 10th Nov-1949 that the post of the Barkhali Adhikari was in the grade of the.....

the Revenue Commissioner. There is therefore no objection to delegate all the powers corresponding to provisions in Bombay Hereditary Officers Act to the Prant Officer except appellate ~~Hereditar~~ powers under section 77 of the Watan Act as shown above and observed in Central Division.

4. Regarding provisions in Watan Rules of 1938 which have no corresponding sections in the Bombay Hereditary Officers Act, the Officer noted below who are competent to deal with them may be invested with these powers viz.

Rules 20(2) (b) and 22 correspond to rule 7 of the Saranjam Rules and section of the Pensions Act. The powers therein are within the competence of Government alone. Cases under these rules 29(2) (b) and 22 can therefore be very well decided by Government.

5. Powers under rule 19 pertaining to disputes of sharers for their shares in watan matters relate more or less to approval of mutations and can be exercised by the Prant Officer in pursuance of orders in Government Resolution, Revenue Department, No.9247/39, dated 17th December 1943.

6. Regarding mutations, Prant Officer is competent to sanction or reject them in class III, IV, VI(a) VI(b) and VII while the Collector can deal with class V and starred lands in class II. The rest of mutations from class I which except in the case of Saranjam, is not on the printed list can be sanctioned by Government alone. (Please vide instructions contained on page 84 of the Revenue Accounts Manual).

7. If the ~~powers~~ powers are delegated on the above lines, the inam system in Baroda would be simplified to some extent and would not tend to accumulate work in the Commissioner, Northern Division's office alone."

The Remembrancer of Legal Affairs Memorandum, No.6968, dated the 23rd May 1950.:-

"If the intention is to abolish the office of "Barkhali Adhikari" and appoint some other officer or authority to do the statutory functions assigned to the Barkhali Adhikari under the

P.T.O.

the Watan Rules 1932 it would be necessary to undertake legislation but until such legislation is passed it would be necessary to appoint some person as the Barkhali Adhikari to perform the functions entrusted to the Barkhali Adhikari under the Rules."

RESOLUTION:- Government is pleased to authorize the Barkhali Assistant at Baroda to exercise the powers of the Barkhali Adhikari under the Watan Rule, 1932 of the ex-Baroda State. An appeal shall lie to the State Government from any decision or order passed by the Barkhali Assistant.

By order of the Governor of Bombay.

(V.N.SARDESAI,)

For Secretary to Government.

Government resolution,No. 6920/49, Revenue Department,
Dated 18th September 1950.

To

The Settlement Commissioner and Director of Land records (Alienation Office),

The Collectors of Baroda, Surat, Kaira, Ahmedabad, Sabar Kantha, Mehsana and Amreli,

The Accountant General,

The Finance Department,

The Legal Department,

The Political and Services Department.

No. of 1950.

Copy forwarded for information and guidance to

EKN.21/6/